STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 25, 2000
v	No. 210118 Berrien Circuit Court
SHANNON TERRELL CREAMER, Defendant-Appellant.	LC No. 97-405927-FH

Before: Markey, P.J., and Murphy and R. B. Burns*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to three to ten years' imprisonment for the assault with intent to commit murder conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first argues that his trial attorney was ineffective for failing to object to opinion testimony from two police officers, who testified that it was their opinion that penetrations in a building awning were bullet holes. Because defendant did not raise the issue of ineffective assistance of counsel in a motion for a new trial or an evidentiary hearing, appellate review is foreclosed unless the alleged deficiencies are sufficiently detailed in the existing record to allow the reviewing court to reach and decide the claim. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

An ineffective assistance of counsel claim is reviewed to determine whether defendant has shown that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). To demonstrate ineffective assistance, defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. *People v Stanaway*, 446

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Mich 643, 687; 521 NW2d 557 (1994). He must also show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at 687-688.

In this case, the challenged testimony was admissible under MRE 701. The testimony consisted of reliable conclusions, it was not overly dependent on scientific, technical or specialized knowledge, and it was premised on the officers' experience in investigating shootings and in dealing with gunshots on other occasions. *Co-Jo, Inc v Strand*, 226 Mich App 108, 116-117; 572 NW2d 251 (1997); *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 455-456; 540 NW2d 696 (1995). Accordingly, defense counsel's failure to object to the challenged testimony did not amount to ineffective assistance of counsel. An attorney is not required to make a groundless objection. *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 42 (1995).

Defendant next claims that improper questions by the prosecutor during his cross-examination denied him a fair trial. We disagree. First, defendant contends that the prosecutor improperly attempted to show that he committed an unrelated crime when the prosecutor asked him whether he knew if his brother had contacted and threatened the family member of a witness. Defendant denied any knowledge of this happening.

A court will not condone a prosecutorial effort to "prove" the commission of an uncharged, unrelated crime in order to gain the defendant's conviction of the charged crime. Thus, a prosecutor may not introduce independent issues against a defendant. Likewise, the prosecution may not allude to such proscribed issues in closing argument. *People v Johnson*, 393 Mich 488, 497-498; 227 NW2d 523 (1975).

Defendant did not preserve this issue with an appropriate objection at trial. An objection based on one ground is insufficient to preserve an appellate attack based on a different ground. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). However, claims of prosecutorial misconduct may be reviewed on appeal absent objection if a curative instruction could not have eliminated the prejudicial effect of any error or where failure to review the issue would result in a miscarriage of justice. *Stanaway*, *supra* at 687; *People v Rivera*, 216 Mich App 648, 651-652; 550 NW2d 593 (1996).

Here, the prosecutor asked defendant whether he knew about an alleged crime committed by his brother. While this clearly involved an independent issue, it did not involve an allegation that defendant himself committed any unrelated illegal act. Further, defense counsel made it clear that defendant could not have been involved in any illegal activity because at the time of the alleged action he was incarcerated. Also, defendant denied any knowledge of this alleged activity, and the prosecutor was not able to present any proofs to tie defendant to any alleged threat of a witness by his brother. Under these circumstances, we conclude that the line of questioning was not so egregious that a curative instruction could not have eliminated any resulting prejudice. *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Accordingly, appellate relief is not warranted.

Defendant also claims that the prosecutor impermissibly asked him to comment on the veracity of other witnesses. While it is generally improper for the prosecutor to ask a defendant to comment on

the credibility of prosecution witnesses, *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985), such questions are curable with a limiting instruction. *People v Messenger*, 221 Mich App 171, 180; 561 NW2d 463 (1997). Here, defendant did not preserve this issue with an appropriate objection at trial. *Asevedo*, *supra* at 398; *Stanaway*, *supra* at 687; *Rivera*, *supra* at 651-652. The record indicates that defendant handled the challenged questions well. We conclude that any prejudice that inured to defendant could have been cured by a limiting instruction. We are satisfied that the questioning did not deprive defendant of a fair trial. *Buckey*, *supra* at 17.

Next, defendant claims that the trial court abused its discretion by imposing a sentence that is disproportionate to the seriousness of the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990); *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). We disagree.

Defendant was sentenced within the sentencing guidelines' recommended minimum sentence range and has not demonstrated any unusual circumstances to rebut the presumptive validity of his sentence. *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997); *St John*, *supra* at 649; *People v Piotrowski*, 211 Mich App 527, 532; 536 NW2d 293 (1995); *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Accordingly, we conclude that defendant's sentence is proportionate.

Finally, because defendant's sentence is proportionate, we reject his additional claim that it amounts to cruel and unusual punishment. *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997); *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993).

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns